BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1

COMMENTS OF THE NYNEX TELEPHONE COMPANIES

The NYNEX Telephone Companies

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SUMMARY

In 1990, the Commission adopted a fundamental modification to the manner in which it engaged in telecommunications rate regulation, replacing traditional rate of return regulation with price cap regulation. In adopting this significant regulatory reform, the Commission anticipated lower rates for telecommunications services and increased incentives for efficiency. Price cap regulation has undeniably helped to foster the Commission's goals of just, reasonable and nondiscriminatory rates, as well as a nationwide telecommunications infrastructure that offers innovative, high quality services. During the period that price caps have been in effect, overall local exchange carrier interstate access rates have declined and infrastructure development has continued, while service quality has been maintained. Furthermore, customers have enjoyed the benefits of the multitude of new services which have been introduced by NYNEX and the other LECs.

The Commission instituted this proceeding to consider whether the price cap plan for LECs should be revised "to better serve the goals of the Communications Act and the public interest in the years ahead". NYNEX believes that the basic goals of price caps remain valid. If those goals are to continue to be achieved in the future, however, significant

modifications to the price cap plan are required. This is a time of unprecedented change in the telecommunications industry. Changes in technology and the growth of competition have eroded the basis for fundamental elements of both the Commission's price cap and access charge rules. New service providers are proliferating, competition is growing rapidly and industry participants are entering into strategic relationships in recognition of the convergence of technologies. Moreover, the Clinton Administration has indicated its desire for a National Information Infrastructure, which will require massive investment by the telecommunications industry. Increased flexibility in the Commission's regulatory policies is required if the goals of the Administration and Commission are to be achieved.

Several fundamental changes to the price cap plan should be implemented. First, the Commission should adopt a pure price cap model. Such a model would provide carriers with clear investment and efficiency incentives. The sharing and low-end adjustment mechanisms embodied in the current price cap plan fail to provide all of the benefits that could be achieved under pure price caps. Earnings sharing plans limit incentives for efficiency and innovation. Furthermore, the Commission's price cap plan is more costly and complex to administer than a pure price cap plan, because it requires an apparatus for price indexing as well as for measuring and regulating rate of return.

Second, the growth of competition requires that the Commission make a number of revisions to the plan in order to promote regulatory parity between the LECs and their competitors. The United States Telephone Association's Interstate Access Reform Proposal provides an excellent starting point for that reform. These necessary reforms include revised and simplified price cap baskets and bands and significantly increased pricing flexibility for LECs subject to competition. Implementation of the reforms suggested by USTA would allow the LECs the flexibility they need to offer rate levels and rate structures that reflect economic costs rather than arbitrary cost allocations, and to introduce new service offerings that are consistent with technological change and customer needs.

Third, in addition to the changes that should be made to the price cap plan itself, it is critically important that the Commission coordinate this proceeding with several other pending proceedings. Changes to the price cap plan must also be accompanied by other regulatory reforms if the Commission's goals are to be achieved. The Commission must, for example, grant NYNEX a waiver to implement the Universal Service Preservation Plan without further delay. Furthermore, the Commission should (to the extent such issues are not addressed in this proceeding) immediately issue an NPRM for fundamental reform of its interstate access rules. That proceeding should be concluded by the end of this year.

Finally, the Commission should also establish a comprehensive proceeding to consider universal service and subsidy issues. The telecommunications marketplace is changing rapidly, and the preservation of universal service in an era of growing competition is one of the most important and pressing challenges facing the Commission. The question of how to preserve universal service in a rapidly changing telecommunications market is complex, and a variety of solutions have been suggested. Moreover, NARUC has initiated a study of universal service issues from a state perspective, while NTIA has begun hearings on the subject. These issues should not be considered in this proceeding. Rather, the Commission should issue an NOI as soon as possible to focus the debate.

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The NYNEX Telephone Companies ("NYNEX")[1] hereby submit their comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), released February 16, 1994 in the above-captioned proceeding.

I. INTRODUCTION

In 1990, the Commission adopted a fundamental modification to the manner in which it engaged in telecommunications rate regulation, replacing traditional rate of return regulation with price cap regulation. In adopting this significant regulatory reform, the Commission anticipated lower rates for telecommunications services and increased

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1 The NYNEX Telephone Companies are New York Telephone Company ("NYT") and New England Telephone and Telegraph Company ("NET").

incentives for efficiency.[2] Price cap regulation has undeniably helped to foster the Commission's goals of just, reasonable and nondiscriminatory rates, as well as a nationwide telecommunications infrastructure that offers innovative, high quality services. During the period that price caps have been in effect, overall local exchange carrier ("LEC") interstate access rates have declined and infrastructure development has continued, while service quality has been maintained. Furthermore, customers have enjoyed the benefits of the multitude of new services which have been introduced by NYNEX and the other LECs.

The Commission instituted this proceeding to consider whether the price cap plan for LECs should be revised "to better serve the goals of the Communications Act and the public interest in the years ahead".[3] The Commission requests data, comment and analysis on three sets of issues. First, the Commission requests comment on whether the goals of price caps should be refined to assure that regulation encourages the deployment of the facilities and services consumers and businesses will need in the future.[4] Second, the Commission

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2 NPRM at para. 2.

3 NPRM at para. 4. The Commission adopted the LEC price cap plan in 1990, and initial LEC price cap rates took effect on January 1, 1991. The Commission scheduled a comprehensive review of the LEC price cap plan in its fourth year of operation. See Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786 (1990) ("LEC Price Cap Order"), erratum, 5 FCC Rcd 7664 (1990), modified on recon., 6 FCC Rcd 2637 (1991) ("LEC Reconsideration Order"), aff'd, National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

4 NPRM at para. 5.

identifies a set of baseline issues concerning whether to revise the current plan to improve its performance, or to adjust the plan in response to changes in technology, regulation and the market in the near term.[5] Finally, the Commission requests comment on a set of transitional issues related to adjustments needed to reduce or streamline regulation of LEC services as competition grows.[6]

NYNEX believes that the basic goals of price caps remain valid. If those goals are to continue to be achieved in the future, however, significant modifications to the price cap plan are required. This is a time of unprecedented change in the telecommunications industry. Changes in technology and the growth of competition have eroded the basis for fundamental elements of both the Commission's price cap and access charge rules. New service providers are proliferating, competition is growing rapidly and industry participants are entering into strategic relationships in recognition of the convergence of technologies. Moreover, the Clinton Administration has indicated its desire for a National Information Infrastructure,

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5 Id. at para. 6. These baseline issues include implementation of infrastructure development goals, possible changes in the composition of price cap baskets and bands, changes in the productivity factor or rate levels, revision or elimination of the sharing and low-end adjustment mechanisms, and possible revisions to the rules governing new services.

6 Id. at para. 7. These transitional issues include a request for information concerning the current state of local exchange and interstate access competition, when and what type of streamlined regulation is appropriate as services become subject to greater competition, and when the next price cap performance review should be conducted.

which will require massive investment by the telecommunications industry.[7] Increased flexibility in the Commission's regulatory policies is required if the goals of the Administration and Commission are to be achieved.

Several fundamental changes to the price cap plan should be implemented. First, the Commission should adopt a pure price cap model. Such a model would provide carriers with clear investment and efficiency incentives. The sharing and low-end adjustment mechanisms embodied in the current price cap plan fail to provide all of the benefits that could be achieved under pure price caps. Earnings sharing plans limit incentives for efficiency and innovation. Furthermore, the Commission's price cap plan is more costly and complex to administer than a pure price cap plan, because it requires an apparatus for price indexing as well as for measuring and regulating rate of return.

Second, the growth of competition requires that the Commission make a number of revisions to the plan in order to promote regulatory parity between the LECs and their competitors. The United States Telephone Association's ("USTA") Interstate Access Reform Proposal ("USTA Proposal") provides an excellent starting point for that reform.[8] These necessary reforms include revised and simplified price cap baskets and

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7 See Speech by Vice President Gore at the University of California at Los Angeles, January 11, 1994.

8 See In the Matter of Reform of the Interstate Access Rules, RM-8356, United States Telephone Association, Petition for Rulemaking, filed September 17, 1993.

bands and significantly increased pricing flexibility for LECs subject to competition. Implementation of the reforms suggested by USTA would allow the LECs the flexibility they need to offer rate levels and rate structures that reflect economic costs rather than arbitrary cost allocations, and to introduce new service offerings that are consistent with technological change and customer needs.

Third, in addition to the changes that should be made to the price cap plan itself, it is critically important that the Commission coordinate this proceeding with several other pending proceedings. Changes to the price cap plan must also be accompanied by other regulatory reforms if the Commission's goals are to be achieved. The Commission must, for example, grant NYNEX a waiver to implement the Universal Service Preservation Plan without further delay.[9] Furthermore, the Commission should (to the extent such issues are not addressed in this proceeding) immediately issue an NPRM for fundamental reform of its interstate access rules. That proceeding should be concluded by the end of this year.

Finally, the Commission should also establish a comprehensive proceeding to consider universal service and subsidy issues. The telecommunications marketplace is changing rapidly, and the preservation of universal service in an era of growing competition is one of the most important and pressing

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9 See NYNEX Transition Plan to Preserve Universal Service in a Competitive Environment, Petition for Waiver, filed December 15, 1993 ("Universal Service Preservation Plan" or "USPP").

challenges facing the Commission. The question of how to preserve universal service in a rapidly changing telecommunications market is complex, and a variety of solutions have been suggested.[10] Moreover, NARUC has initiated a study of universal service issues from a state perspective, while NTIA has begun hearings on the subject. These issues should not be considered in this proceeding. Rather, the Commission should issue an NOI as soon as possible to focus the debate.

II. CHANGES TO THE PRICE CAP PLAN ARE NECESSARY TO ACCOMMODATE CHANGES IN TECHNOLOGY AND COMPETITION

A. The Current Price Cap Plan Has Yielded Substantial Consumer Benefits

In the LEC Price Cap Order, the Commission concluded that "a properly designed system of incentive regulation will be an improved form of regulation, generating greater consumer benefits."[11] LEC customers generally, and NYNEX's customers specifically, have realized substantial benefits during the three years that the Commission's price cap rules have been in effect.[12]

Nationwide, the percentage of households subscribing to telephone service has increased from an annual average of 93.3 percent in 1990 to 94.2 percent in July 1993.[13] In the

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10 See, for example, Petition of MFS Communications Company, Inc., dated November 1, 1993, RM-8388.

11 LEC Price Cap Order at para. 21.

12 NPRM at para. 34, General Issue 2.

13 See Attachment A.

NYNEX region, the number of households subscribing to telephone service has been relatively stable. The percentage of households subscribing to telephone service in the NYNEX region, however, remains equal to or higher than the national average in every state other than New York.[14]

In NYNEX's region, telephone subscription levels for lower income groups and ethnic groups have increased over time. This is due in part to the fact that the real cost of telephone service, adjusted for inflation, has decreased over time. NYNEX has also attempted to address the needs of these groups through specialized marketing efforts.[15] Furthermore, various state and federal assistance programs have also helped to keep residential service affordable. For example, NYNEX has one of the most generous Lifeline programs in the nation. In New York, qualifying customers receive basic residential service for $1.00 per month. Hundreds of thousands of NYNEX customers who might not otherwise be able to afford telephone service are enrolled in these programs.[16]

During the three years that price caps have been in effect, infrastructure development has proceeded at a steady

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14 At 93.4 percent, the level of subscribership in New York is only slightly below the national average. See Attachment A.

15 For example, NYNEX has recently formed a new marketing group to address the needs of non-English speaking customers.

16 For example, in New York City, the number of Lifeline customers increased from 271,018 (9.12% of all residence customers) in 1992 to 319,026 (10.69% of all residence customers) in 1993. Throughout New York State, 8.69% of NYNEX's residence customers receive Lifeline benefits.

pace.[17] NYNEX has continued fiber optic deployment in both interoffice and fiber-to-the-curb systems. During 1991, 1992 and 1993, NYNEX deployed a total of 165,000, 169,000 and 157,000 additional strand miles of fiber in its network, respectively, bringing the total number of strand miles deployed to 964,000 by year-end 1993. Thus, the number of strand miles of fiber in NYNEX's network doubled during the first three years that price caps have been in effect. This fiber optic infrastructure provides greatly increased capacity in comparison to the copper facilities being replaced.[18]

NYNEX has also continued its aggressive program of deploying digital switches and Signalling System 7 ("SS7") technology. Between 1990 and 1992, the number of digital switches in NYNEX's network increased from 783 to 1085.[19] In 1990, less than 1% of NYNEX's access lines were equipped with SS7. By the end of 1993, that percentage had risen to 70%.

Furthermore, NYNEX's interstate earnings have remained reasonable while prices have declined during the price cap period.[20] In 1991, the interstate rates of return for NYT

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17 The Commission requested data regarding the rate at which price cap LECs are replacing copper wire with fiber optic cable. NPRM at para. 36, Baseline Issue 1c.

18 The number of copper miles in service declined from 168.4 million to 166.5 million during that period.

19 Year end data for 1993 is not yet available.

20 The Commission requests comment as to whether the price cap LECs' profits have been reasonable. NPRM at para. 46, Baseline Issue 3b.

and NET were 9.84% and 8.60% respectively.[21] In 1992 and 1993, NYNEX's interstate rates of return were 12.50% and 12.53%, respectively.[22] The earnings of NYNEX are quite similar to those of the other LECs,[23] and are comparable to the earnings achieved during that period by the Standard & Poors 400 companies.[24] Moreover, they are lower than those achieved by AT&T during this period.[25]

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21 Rates of return were reported separately for NYT and NET prior to 1992, when NYNEX filed tariffs to unify the rates of NYT and NET. The 1991 rates of return include a normalization of restructuring costs for each of the companies.

22 In the NPRM, the Commission states that NYNEX's 1992 interstate rate of return was 13.35% (NPRM at para. 26). This rate of return was apparently taken from 1992 ARMIS data. This data is not appropriate for calculating interstate rates of return. In connection with its 1991 Form 492 report, NYNEX was granted approval to normalize certain downsizing costs on the report. (In the Matter of 1992 Annual Access Tariff Filings, Memorandum Opinion and Order, released June 22, 1992, at para. 13). The normalization was proposed for Form 492 reporting and ratemaking only, and the ARMIS reports were not adjusted. In its 1992 Form 492 report, NYNEX explained that the reported expenses included the 1992 portion of the normalized restructuring costs. When this adjustment (as well as the adjustment to normalize the revenues associated with the lower formula adjustment) is included in the calculation of the 1992 interstate rate of return, that return is 12.50%.

23 In 1992, the average interstate rate of return for price cap LECs was 12.25%. NPRM at para. 16.

24 During the years 1991 and 1992, the average return on investment for the Standard & Poors 400 was 15.10% and 14.74%, respectively. 1993 figures are not yet available.

25 AT&T's rates of return for 1991, 1992 and 1993 were 13.41%, 12.77% and 13.49%, respectively. Furthermore, it is important to note that the financial markets discount the earnings of NYNEX and other LECs in comparison to those of AT&T and other market participants with more realistic depreciation rates. NYNEX's earnings, if

(Footnote Continued On Next Page)

Customers have also received the benefits of decreasing prices under price caps. During the last three years, NYNEX's prices for its interstate access services have been reduced by a total of $187 million.[26] Furthermore, in its 1994 annual access charge filing, NYNEX's rates for its interexchange carrier access services were set $35 million below the price cap index.

NYNEX has also continued to introduce a wide variety of new services. During the last three years, approximately 67 new or restructured services have been introduced. Among these many new offerings are groundbreaking offerings such as NYNEX Enterprise Service[sm].

Finally, NYNEX has continued to pursue the goal of providing quality service to all customers. Since 1991, most service quality measurement results have been consistent or have improved.[27] NYNEX will continue to give service quality the highest level of priority.

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25 (Footnote Continued From Previous Page)

adjusted to reflect AT&T's composite depreciation rate, would have been 6.00%, 9.36% and 9.30% for 1991, 1992 and 1993, respectively.

26 NYNEX's prices were reduced $68 million in 1991, $24 million in 1992 and $95 million in 1993. An additional $25 million in price reductions has been proposed for NYNEX's interexchange carrier access services for 1994. Furthermore, NYNEX has proposed in the USPP to reduce prices an additional $25 million below the PCI.

27 NYNEX did, however, experience some decline in residence local service levels during the second and third quarters of 1993. NYNEX immediately addressed those difficulties by increasing the number of repair technicians. Residence local service quality levels improved dramatically during the final quarter of 1993.

B. The Commission's Rules Must Accommodate the Dramatic Changes in Technology and Increase in Competition

The Commission's price cap rules have represented a substantial improvement over rate of return regulation. As discussed above, price caps have benefitted LEC customers through reduced prices and new services. Moreover, NYNEX has continued to provide universal service while continuing to invest heavily in infrastructure development. However, there have been significant changes both in technology and in the competitive landscape during the last few years. Changes in the access marketplace and in network technologies have occurred so rapidly during the past decade that the Commission's price cap and access pricing rules no longer serve many of the purposes for which they were originally intended.[28] As a result, the Commission's current price cap and access charge rules must be revised to assure that all Americans continue to receive the benefits these rules were designed to produce.

1. Technology is Converging at a Rapid Pace

The rapid convergence of telecommunications, cable and wireless technologies has been one of the most significant trends of the last few years. This trend has important consequences for competition in the local access market.

The Commission recognizes that "[m]arkets and services are converging as telecommunications technology improves and

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28 Federal Perspectives on Access Charge Reform, a Staff Analysis, authored by the Common Carrier Bureau's Access Reform Task Force, dated April 30, 1993, at p. 1.

enlarges the capabilities of the telecommunications networks."[29] Digitalization of the telecommunications signal, along with the rapid deployment of high-capacity fiber optic facilities, are transforming previously separate telecommunications media into a common telecommunications stream. As the telecommunications industry moves into broadband Integrated Services Digital Network and adopts Asynchronous Transfer Mode technology, the same switches and transport facilities will be able to provide virtually any combination of voice, data, image or video services.[30]

With the convergence of technologies, large, long-established firms are able to provide competition for access and other LEC services. For example, cable operators that deploy fiber optic facilities to distribute video can and do use the same facilities to provide private line and access services. Improvements in wireless, cellular and PCS technologies provide additional sources of competition for the LECs. According to a recent study by Peter Huber, anticipated developments in wireless technology will expand the capacity of wireless telephony by 5 to 20 times current levels.[31] Thus, with the convergence of technology the LECs will face (and, in fact, already face) competition not only from small start-up

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29 NPRM at para. 33.

30 See Richard Calkins, "It's All the Same Stuff: Our New Digital 'Anymedia' Industry", Teletimes, Fall 1993.

31 Peter W. Huber, "Competition and Open Markets in the Telecommunications Markets of California", February 8, 1994 ("Huber").

companies, but also from large, well established and well financed competitors. In light of these fundamental changes in the marketplace, the Commission must revise its price cap and access charge rules to place the LECs on a more equal footing with their competitors.

2. Competition in the NYNEX Region is Already Intense

In NYNEX's region, competition is already intense and pervasive.[32] In fact, competition is more advanced in the NYNEX region than in any other part of the country.[33] Although the NYNEX region accounts for only ten percent of total nationwide access lines, it represents half the nationwide revenues of the two largest competitive access providers ("CAPs").[34] NYNEX's customer surveys show that the CAPs have achieved approximately 40 percent of the Special Access/private line market in the New York Metropolitan area.[35] Furthermore, a 1993 study shows that NYNEX has only

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32 The Commission has requested comment concerning the current state of competition for local exchange and interstate access. NPRM at para. 95, Transitional Issues 1a and 1d.

33 For a comprehensive discussion of the growth and current state of competition in NYNEX's region, see USPP at Exhibit 10. A copy of Exhibit 10 to the USPP, entitled "On Competition: The Evolution of Competitive Access and Local Exchange Markets in the NYNEX Operating Areas", is attached as Attachment B.

34 USPP at Exhibit 10, Attachment 3.

35 See Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369 (1992), n. 410, citing NYNEX surveys.

57 percent of the high capacity market in Manhattan (measured in DS1 equivalents) and 74 percent of that market in Boston.[36]

The fact that NYNEX faces more intense competition than any other LEC is not surprising. The NYNEX region is particularly attractive to CAPs and other potential competitors because of the high customer density in New York City and Boston, and because of the concentration of telecommunications - intensive industries such as the financial and service industries.[37]

Moreover, competition has been aided by actions of the state regulatory commissions that have made it easier for the CAPs to act as local exchange carriers in the NYNEX region than in other parts of the country. The state regulatory commissions in the NYNEX region have expanded the opportunities for CAPs in a variety of areas. For example, the New York Public Service Commission ("New York PSC") has required NYNEX to unbundle its FlexPath, Centrex, business and residential exchange services into "link" and "port" charges. This allows CAPs to connect their loop services to NYNEX switches in New York. NYNEX also offers unbundled private line loops in New

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36 See Quality Strategies, "High Capacity Services in the NYNEX Region - 1993", February 1994, at p. 4.

37 In New York State, 1 percent of the land area produces 54 percent of the business calling revenues; 5 percent of the land area produces 80 percent of the business calling revenues; and 10 percent of the land area produces 90 percent of the business calling revenues. In fact, 30 percent of New York's total local business telecommunications revenue is generated in 12 central offices in lower Manhattan. See Attachment B.

York and Massachusetts for Voice Grade, DS1 and DS3 services.[38]

Most state commissions prohibit, or severely restrict, the ability of the CAPs to act as local telephone companies.[39] In 1993, however, the New York PSC was the first state regulatory commission to grant certificates to CAPs to operate with the status of local telephone companies. To date, it has granted certificates to 21 companies to compete within NYNEX's service area in New York.[40] Furthermore, on October 4, 1993, the New York PSC issued an order requiring NYNEX to make entire central office codes available to CAPs as co-carriers. On April 11, 1994, MFS became the first CAP to activate blocks of telephone numbers allocated to its own switch for its customers to use.[41]

MFS has stated that, while it may need regulatory changes to operate as a local telephone company in some states,

> [I]n the single largest market, New York... CAPs have been authorized to provide essentially all of the local exchange

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38 See USPP at pp. 18-20.

39 See Communications Daily, November 16, 1993, at pp. 3-4.

40 These carriers are: ACC Local Fiber Corp., ACC Network Corp., ACC Buffalo, ACC Syracuse, ACC Albany, ACC Binghamton, ACC Rochester, Adelphia Cable, AT&T, Cablevision Lightpath, FiberNet Rochester, MCI, Metropolitan Fiber Systems of NY, Metropolitan Fiber Systems of Westchester, MFS Intelenet, New Channels/Hyperion, Teleport, US Sprint, WilTel, Time Warner of Albany and Time Warner of Rochester.

41 MFS was assigned two blocks of NXX codes in New York City. Each block consists of 10,000 telephone numbers in the 212 area code. A block of codes was also assigned to Teleport on April 14, 1994.

> telecommunications services.... In Boston and possibly other markets, the Company could seek to provide similar services at this time, either through resale of LEC services or in combination with the Company's networks.[42]

Clearly MFS' ability to offer this service immediately in New York shows that the NYNEX region has a hospitable climate for local exchange competition.

With fiber networks constructed in New York and Boston, the CAPs are well positioned to take advantage of the high concentration of business users in the NYNEX region. The CAPs have installed fiber loop plant to 600 buildings in New York and 350 buildings in Boston. In addition, the CAPs are already collocated or are installing collocation facilities in 17 central offices in New York that generate 26 percent of NYNEX's switched access revenues in the state. In Boston, the CAPs are collocated or are installing collocation facilities in 13 offices that generate 13 percent of NYNEX's switched access revenues in Massachusetts.[43]

Furthermore, competition in NYNEX's region is not limited to CAPs such as Teleport and MFS. Cable companies are forging alliances in preparation for head-to-head competition

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42 MFS Prospectus, issued September 13, 1993.

43 In this regard, it should be noted that, while the Commission only recently ordered interstate physical collocation for Special Access and switched transport, NYNEX began offering physical collocation to intrastate private line services in New York in May 1991 and in Massachusetts in August 1991.

with local telephone companies.[44] In fact, several cable companies have already emerged as competitors in the region. For example, Cablevision has established an expanded interconnection arrangement in Long Island, New York and is providing transport services in competition with NYNEX.[45] In addition, Time Warner is testing a switched service on its experimental cable system in Queens, which bypasses NYNEX's network to provide interLATA services through MCI. Another cable operator, Adelphia Communications Corp. ("ACC"), intends to offer both interLATA and intraLATA telecommunications in Syracuse, New York, through its CAP affiliate, Newchannels Hyperion Telecom. A second ACC affiliate, Hyperion Telecom, has been granted a certificate to provide a statewide fiber network in Vermont. In addition, cable companies have begun forming partnerships with CAPs to construct local fiber optic networks. For example, Teleport entered into an agreement last summer with eleven cable companies to expand the cable companies' fiber network in Boston and to construct a new network in Providence, Rhode Island.

Interexchange carriers have also begun to compete aggressively with NYNEX. For example, MCI recently announced

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44 For example, the Time Warner - US West transaction has clear competitive implications for NYNEX. Time Warner currently has over 900,000 cable subscribers in New York City, representing its single largest market.

45 In 1993, Cablevision, in cooperation with AT&T, won a bid to provide telephone, cable television and data services at the C.W. Post campus of Long Island University by offering a package that included cable television service, long distance service, telephone sets and free local telephone usage.

plans to build new local fiber optic networks in more than a dozen large cities, including New York. MCI stated that it "initially ... intends to use the fibers to link its corporate customers directly to its long-distance network, bypassing the local Bell telephone companies - and avoiding the 'access' charges MCI now pays the phone companies for local connections to corporate customers."[46]

The Commission's rules must reflect the substantial changes that are taking place in LEC markets. Competition already exists in LEC access markets. That competition, spurred by changing technology and customer demand, can be expected to increase at a rapid pace. It is vital that the Commission implement changes to the price cap and access rules so that LECs in competitive markets can obtain relief from rigid rules that were developed under entirely different market conditions. Without such changes, LEC efficiency and investment incentives will continue to be dampened, and the LECs' customers will be denied the full benefits of competition.

C. NYNEX's Proposal For Price Cap and Access Reform Will Permit Regulation to Keep Pace with Changes in the Marketplace

The price cap plan adopted by the Commission, "is a fairly complicated approach to regulation consisting of baskets of services, formulas for rate changes, exogenous and endogenous factors, sharing arrangements and earnings

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46 "MCI Plans to Enter Local Markets", The New York Times, January 5, 1994, at Section D, p. 1.